IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 624

SAMUEL A. PARSONS, as Town Clerk of the Town of Hubbardton, *Appellant*

and

LEROY E. LAWRENCE, ERMA PUFFER, SAMUEL A. PARSONS, AUSTIN T. FOSTER, LAWRENCE FRANKLIN, JOHN D. MASTERTON, RUSSELL HOLMES, STOYAN CHRISTOWE, CORNELIUS GRANAI and ROGER L. MACBRIDE, *Appellants-Intervenors*

v.

T. GARRY BUCKLEY, JANETTE N. BERRY and JAMES E. FITZPATRICK, *Appellees*

No. 625

PHILIP H. HOFF, Governor of Vermont, and HOWARD E. ARMSTRONG, Secretary of State of the State of Vermont, *Appellants*

v.

T. GARRY BUCKLEY, JANETTE N. BERRY and JAMES E. FITZPATRICK, *Appellees*

On Appeal From the United States District Court for the District of Vermont

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MOTION BY ALL THE PARTIES TO THIS CASE TO MODIFY THE ENFORCEMENT ORDER OF THE COURT BELOW AND TO AFFIRM AS MODIFIED

Now come Appellants, Philip H. Hoff, Governor of Vermont, Howard E. Armstrong, Secretary of State of the State of Vermont, and Samuel A. Parsons, as Town Clerk of the Town of Hubbardton; Appellees,

T. Garry Buckley, Janette N. Berry, and James E. Fitzpatrick; Intervenors, Leroy E. Lawrence, Erma Puffer, Samuel A. Parsons, Austin T. Foster, Lawrence Franklin, John D. Masterton, Russell Holmes, Stoyan Christowe, Cornelius Granai and Roger L. MacBride; constituting all the parties to this cause, and respectfully move this Court to modify the District Court's enforcement order to conform to a stipulation signed by all the parties to this cause and the Intervenors, attached to this motion as Appendix A, and to affirm the judgment of the District Court as modified.

As grounds of this motion Appellants, Appellees and Intervenors respectfully represent that there is no contest on any issue of fact or law between them, and there is, therefore, no purpose in setting this case for argument.

The parties to this case are convinced that the enforcement of reapportionment according to the terms of the stipulation is in the public interest. We believe that the time limits set out in the stipulation will operate as speedily as is practicable in the State of Vermont. These issues have been argued at some length in the Jurisdictional Statements filed in this Court. They can be summed up by stating that the six reapportionment cases which were decided at the October 1963 Term gave every indication that this Court would first give the legislatures of the States an opportunity to apportion their bodies so as to comply with the Equal Protection Clause of the Fourteenth Amendment and to allow State governments to continue to operate in the interim. We submit that the plan contained in the stipulation adequately meets this test, comports with the spirit of the Court's substantive

decisions on reapportionment, and is in the public interest.

In addition to saving the time of this Court there are important reasons why this case should be decided immediately. The Vermont legislature convenes on January 6, 1965. The District Court's order enjoins all legislative action except reapportionment legislation. In addition, it shortens the terms of the present legislature so that they expire March 31, 1965, at which time a new election must be held and a new legislature must be elected and take office. This creates a feeling of confusion. There are, of course, members of the legislature who desire to resist reapportionment and who hope that the Court will on its own motion reverse the decision of the District Court on its merits. The parties to this cause recognize that the probability that this Court would on its own motion take such action is practically nonexistent. Nevertheless, the legal situation is not clearly understood by a large number of the legislators.

It is true that this Court has stayed the portions of the order of the District Court from which this appeal is taken and that as a matter of law the legislature can proceed with its business while this case is under advisement. But the possibility that this Court might affirm the injunction against legislative action other than reapportionment and the order cutting short the terms of the legislators creates an atmosphere of uncertainty which, even if this Court acts on this appeal with the utmost speed, will render the first month of the legislative session futile. It ordinarily takes about six months to pass an appropriations bill. There is a probability that in spite of the stay very little will be

done by the legislature until the oppressive provisions of the order from which we appeal are reversed.

We attach as Appendix B a more detailed statement of the reasons why these appeals should be summarily disposed of according to the stipulation.

Respectfully submitted,

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Dated: January 4, 1965

APPENDIX A

IN THE

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No. 624

SAMUEL A. PARSONS, as Town Clerk of the Town of Hubbardton, *Appellant*

and

LEROY E. LAWRENCE, ET AL., *Appellants-Intervenors*

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No. 625

PHILIP H. HOFF, Governor of Vermont, et al., *Appellants*

v.

T. GARRY BUCKLEY, ET AL., *Appellees*

Stipulation

NOW COMES, Philip H. Hoff, Governor of the State of Vermont and Howard E. Armstrong, Secretary of State of the State of Vermont, Appellants, by and through their attorneys, Attorney General Charles E. Gibson, Jr. and Deputy Attorney General Chester S. Ketcham; Samuel A. Parsons, Appellant, by and through his attorney, Hilton A. Wick, Esq.; T. Garry Buckley, Janette N. Berry and James E. Fitzpatrick, Appellees, by and through their attorney, Richard Thomas, Esq.; and Leroy E. Lawrence, Erma Puffer, Samuel A. Parsons, Austin T. Foster, Law-

rence Franklin, John D. Masterson, Russell Holmes, Stoyan Christowe, Cornelius Granai and Roger L. MacBride, Appellant-Intervenors, by and through their attorney, Hilton A. Wick, Esq., being all the parties in said litigation, and STIPULATE that the United States Supreme Court be requested to modify the Judgment Order of the District Court dated August 3, 1964, as follows:

That Paragraph (3) of said Order be deleted and in lieu thereof the Order include the following:

1. Therefore, subject to the provisions hereinafter appearing, the injunction that plaintiffs have requested restraining the officers of the State and those of the counties, towns and cities charged with the conduct of the elections of members of the General Assembly from proceeding with elections pursuant to the present method of apportionment is granted; and the defendants Philip H. Hoff, Governor of Vermont, Howard E. Armstrong, Secretary of State, the Town Clerks of the Towns of Vermont, and the County Clerks of the Counties of Vermont, and their respective successors in office, are perpetually enjoined from doing any act or taking any steps in furtherance of nominating or holding elections of senators or representatives to the Senate or House of Representatives of the State of Vermont pursuant to said method, and said defendants are further enjoined from certifying or in any other manner declaring that the results of such nominations or elections are valid or that the General Assembly of the State of Vermont which, if constitutionally elected, would be convened on January 6, 1965, is properly or legally constituted, unless by some other authorized lawful and constitutional method Senators and Representatives are nominated and elected to the Senate and House of Representatives of the State of Vermont pursuant to a reapportionment or redistricting of the House of Representatives to be effected promptly, such reapportion-

ment or redistricting of the Senate and reapportionment or redistricting of the House of Representatives having been done in such manner as to achieve substantial equality in the choice of members of the General Assembly as guaranteed by the equal protection clause of the Fourteenth Amendment of the United States Constitution. It is, however, permissible for the September 1964 primary elections for nominees for the offices of Senators and Representatives and for the general elections to be held on November 3, 1964 to be conducted as presently scheduled to be conducted, and if, in the meantime, no members shall have been chosen by a constitutionally valid method, the members of the General Assembly chosen as heretofore may convene on January 6, 1965, provided that:

(a) A reapportionment bill or bills be introduced in at least one House of the General Assembly by February 1, 1965.

(b) Should the General Assembly desire to submit the matter of reapportionment to a constitutional convention, legislation shall be enacted on or before March 1, 1965 to provide for the convening of a constitutional convention on or before June 1, 1965.

(c) Should legislation be enacted setting up a constitutional convention, said convention shall finish its deliberations by September 1, 1965.

(d) If the matter of reapportionment is not referred to a constitutional convention, reapportionment legislation shall be enacted so as to comply with the mandate of the Court on or before July 1, 1965.

(e) The General Assembly shall be empowered to enact all legislation as usual for the operation of state, town and county governments between January 6, 1965 and July 1, 1965.

(f) If reapportionment legislation is not enacted by July 1, 1965, and if a constitutional convention shall fail to reapportion the General Assembly by September 1, 1965, the Court shall reapportion the General Assembly so as to comply with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

(g) In any event, a reapportioned General Assembly shall have been elected and ready to serve by the first Wednesday after the first Monday in January, 1966.

(h) The terms of office of the members to the 1965 General Assembly shall expire on July 1, 1965, except that their offices may continue if called into special session by the Governor of the State of Vermont to act upon a State emergency not pertaining to reapportionment.

Dated this 26th day of December, 1964.

s/ CHARLES E. GIBSON, JR.
Charles E. Gibson, Jr.
Attorney General

s/ CHESTER S. KETCHAM
Chester S. Ketcham
Deputy Attorney Genreal

Attorneys for Appellants
Hoff and Armstrong

s/ RICHARD THOMAS
Richard Thomas, Esq.
Attorney for Appellees Buckley,
Berry and Fitzpatrick

s/ HILTON A. WICK
Hilton A. Wick, Esq.
Attorney for Appellant Parsons
and Appellants-Intervenors

APPENDIX B

1. The District Court, District of Vermont, issued a Judgment Order on August 3, 1964, wherein it enjoined the 1965 General Assembly from enacting any legislation other than reapportionment and limited the two-year terms of the members of the 1965 General Assembly to April 1, 1965.

2. The House of Representatives of the Vermont General Assembly is and always has been apportioned in accordance with the terms of the Vermont Constitution. The Senate of the Vermont General Assembly is apportioned in accordance with the Vermont Constitution as interpreted by the Vermont Supreme Court.

3. The 1963 General Assembly took final adjournment of its 1964 Special Session on March 13, 1964. At the time of said adjournment, the General Assembly was not knowingly apportioned in violation of the United States Constitution. The 1963 General Assembly has not been in session since that time and has not had an opportunity to comply with the mandate of the District Court.

4. A Legislative Reapportionment Commission commenced its deliberations on reapportionment plans immediately after the issuance of the District Court's order dated August 3, 1964. A Governor's Committee on Reapportionment also commenced its deliberations shortly after said date. Numerous reapportionment plans were studied by these groups throughout the late Summer and Fall. The legislative committee has not, as yet, prepared a final report but it plans to submit such a report to the 1965 General Assembly. The Governor's Committee did not submit a final report to the Governor until December 11, 1964.

5. The United States Congress did not take final adjournment until October 3, 1964, and prior to adjournment numerous bills and resolutions were introduced pertaining to the reapportionment issue.

6. During the Summer and Fall of 1964, the State of Vermont was engaged in an extensive election campaign

for Governor, Congress and all state and local offices. The calling of a special session of the 1963 General Assembly during this period would have subjected one's rights under the Fourteenth Amendment to becoming engulfed in partisan politics.

7. After November 3, 1964, it is unlikely that the "lame duck" 1963 General Assembly could have sufficiently considered and enacted a reapportionment plan, particularly when its own committee was still working on this serious question and was not in a position to submit a final report.

8. Under all of the circumstances, the Governor, in the exercise of his best judgment, did not call the 1963 General Assembly into special session. Whether this judgment was good or bad does not detract from the fact that the General Assembly has not had an opportunity to comply with the Court's Order and to continue the normal processes of state government in the interim.

9. Under the Court decree, the 1965 General Assembly must apportion by April 1, 1965. Under the present law, primary petitions must be filed not less than forty days prior to the primary election and the general election is held fifty-six days after the primary election. Under any reapportionment plan, it will become necessary for most candidates to campaign in new districts covering a greater geographical area with a larger population. This fact alone would be reason enough for a longer period in which to campaign. Under the present election laws, a reapportioned legislature could not be elected until April 12, 1965 at the earliest and July 5, 1965 at the latest. In order for the election to take place on April 12, it would be necessary for the 1965 General Assembly to enact reapportionment legislation on the first day of the session which commences on January 6, 1965. Such action is beyond the realm of possibility. It is most likely that careful deliberations by the 1965 General Assembly in studying various systems of

reapportionment will result in no special elections until July 5, 1965, or a date approaching said time.

10. The State fiscal year ends on June 30, 1965. No money has been appropriated for the operation of state government beyond that date and the 1965 General Assembly is prohibited from enacting such legislation under the order of the District Court. Without a modification of the order, it is likely that no appropriation act can be passed before the end of the fiscal year. This will result in a complete breakdown of state government. Without attempting to enumerate all the problems which will result in the absence of an appropriation act, some resulting hardships will include:

(a) No funds will be available to compensate state employees;

(b) No funds will be available to keep the state courts in operation;

(c) No funds will be available to match Federal funds in the construction of the interstate highway system;

(d) The Social Security Act requires that the Vermont Commissioner of Social Welfare certify that financial participation from Vermont is available before Federal funds can be granted to make payments for State Plans under the terms of said Act. Such certification cannot be made without an appropriation by the Vermont General Assembly. Presently, Federal and State funds amount to approximately $9,000,000.00 annually for these programs. After July 1, 1965, in absence of state appropriations the following programs would have no funds:

(1) Grants to the state for aid and services to needy families with children. Under this program some 5,300 persons receive monthly assistance for the basic necessities, i.e., food, clothing and shelter.

(2) Grants to the state for maternal and child welfare. Some 2,000 children are served under this sec-

tion of the Social Security Act either in the Department's Protective Services role or under the Department's Total Care and Custody program.

(3) Grants to the state for Aid to the Aged, Blind or Disabled, or for such aid and medical assistance for the aged. Grants are made for basic necessities, i.e., food, clothing and shelter and some medical care in all of these programs except Medical Assistance for the Aged. The latter program provides grants only for some necessary medical services. Monthly case loads for said programs are approximately as follows:

Old Age Assistance	5,400 persons
Aid to Blind	120 persons
Aid to Disabled	1,200 persons
Medical Assistance for the Aged	150 persons

(e) A continuation of the benefits under the Manpower Development and Training Act in Vermont will not be possible if no appropriation is made by the General Assembly for said program by July 1, 1965.

11. Under the present court injunction, no enabling legislation can be enacted so as to allow the State to participate in new Federal programs which require such legislation. Without attempting to enumerate all such programs, some include:

(a) Federal Food Stamp Act. This Act authorizes the United States Department of Agriculture to adopt a food stamp plan to provide low-income households more adequate nutritional diets. Under this program, stamps would be purchased by individuals through the State Social Welfare Department at a nominal cost and then exchanged at stores for more food than could be purchased by the money paid for the stamps. State legislation is needed in order to take advantage of this program.

(b) Day Care Licensing. The Federal program provides Federal funds on a matching basis with State funds for support of day care programs. This program provides means of insuring adequate care for children of working mothers. In order for Vermont to participate in this program, legislation is necessary to provide for the licensing of day care establishments.

(c) Aid to Families of Dependent Children. The last session of Congress authorized aid under this program for children up to age twenty-one so long as such child continued with a formal high school or vocational education. The prior Federal law limited these benefits to children eighteen years or under. Present Vermont law limits State participation in this program to children eighteen years or under. Further legislation is needed in order to gain the increased coverage provided by the change in the Federal law.

(d) The Vermont enabling legislation for Medical Assistance for the Aged expires on June 30, 1965. Further legislative action is needed before said date in order that this program may continue in Vermont.

(e) Amendment of State law pertaining to participation in the Higher Education Act so as to allow continuation of loans to students at the University of Vermont.

12. Under the present court injunction, no legislation can be enacted concerning the serious tax problems which face the State of Vermont. Without attempting to enumerate all such problems, some of them are:

(a) Examination of the general tax laws in light of the increased needs of state government.

(b) Examination of the percentage received by the State from parimutuel race tracks.

(c) Examination of the present state liquor monopoly and the taxes obtained thereunder.

13. Under the present court injunction, no legislation can be enacted concerning the urgent need for increased state personnel and the need for laws protecting the safety of the state's citizens. Without attempting to enumerate all of these problems, some include:

(a) Legislation to increase the staff of the Attorney General's office in order to perform the duties required by law. It is impossible for the Attorney General and the Deputy Attorney General, as the only trial lawyers in non-highway matters, to carry the workload which has been increased by the reapportionment suit, as well as other litigation matters.

(b) Legislation to increase personnel for the purposes of auditing state banks.

(c) Enactment of a law clarifying the payment to counsel in criminal cases. Further amendment of the law is needed in light of this Court's decision in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), 9 L. Ed. 2d 799, 83 S. Ct. 792, particularly as it pertains to fugitive from justice cases.

(d) Enactment of laws to stem the increased highway death toll on Vermont highways which exceeded all previous records in 1964 and was one of the worst records in the country.

(e) Enactment of a law protecting the public from resale of parimutuel tickets by a syndicate at the parimutuel track.

14. Under the present court injunction, no legislation can be enacted to revise village and city charters. Without enumerating all of the problems in this area, some of them include:

(a) Enactment of legislation revising the City of Burlington charter. In 1964, the City of Burlington completed a new high school building. The present deficit in

the operation of the Burlington schools is approximately $100,000.00. It is anticipated that there will be a deficit of $500,000.00 for the next fiscal year. Under the present character, there is no way to enact new types of local taxes in order to operate the schools and the present charter prohibits borrowing for the operation of the schools. A charter provision provides that the office of school superintendent shall become vacant if more money is spent than was appropriated. Another charter provision provides that members of the school board shall become personally liable for payments made in the operation of the schools when such payments exceed the amount of money appropriated.

(b) Enactment of legislation revising the City of Barre charter. Urgent needs in the fields of zoning and urban renewal require such revision.

(c) It is anticipated that several village charters need revision so as to better provide for schools, zoning and urban renewal.

15. It is hoped and anticipated that this Court's stay of the District Court's order will allow time enough for the passage of some of this needed legislation. However, it is also anticipated that many other problems necessitating legislation will become known as the legislature begins its deliberations.

16. At least thirty-four states are involved with reapportionment problems.[1] In only three other cases have attempts been made to enjoin legislative action by representatives to the General Assembly. In Washington, such action was not taken until after the legislature had been given an opportunity to reapportion and failed to comply with the Court's order. In Georgia, an injunction against

[1] The Council of State Governments pamphlet entitled "Legislative Apportionment: A Summary of State Action, June 15, 1964 - November 1, 1964."

part of the legislative duties was modified by the District Court after this Court had noted probable jurisdiction. On July 23, 1964, the Connecticut District Court issued an order which enjoined legislative action. After a conference between the Governor of Connecticut and the District Court on July 29, 1964, this part of the order was deleted. Is is interesting to note that the Connecticut modification took place just five days prior to the order in the Vermont case enjoining legislative action even though two of the members of the Three-Judge Court in Connecticut are also members of the Three-Judge Court in Vermont.

17. In only four other cases have the terms of the members of the General Assembly been shortened. In no case have the terms been limited to less than three months as in the case at bar. The next most severe time limit is New York and Washington which allows the terms to continue for one year.

18. Considering all of the factors in this case, all of the parties to this litigation have stipulated to a modification of the order of the District Court. The Stipulation is incorporated as Appendix A to this Motion. Under the terms of this Stipulation, the General Assembly is allowed to keep state government in operation while reapportioning itself so as to meet the requirements of the Fourteenth Amendment.

Dated at Montpelier, Vermont, this 4th day of January, 1965.

STATE OF VERMONT

CHARLES E. GIBSON, JR.
Attorney General

By_____

CHESTER S. KETCHAM
Deputy Attorney General